

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **67/CHNY/2022**

निर्धारण वर्ष /Assessment Year: 2007-08

M/s. Auro Food P Ltd.,
Flat No.2A, IIIrd Floor,
C.S. Towers,
No.34, Bazullah Road,
Chennai – 600017.

The DCIT,
v. Corporate Ward 1(1),
Chennai

PAN: AAACA 5360Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Arjunraj, CA
for Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 12.05.2022

घोषणा की तारीख/Date of Pronouncement

: 20.05.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi dated 10.01.2022. The assessment was framed by the DCIT, Corporate Circle 1(1), Chennai for the assessment year 2007-08 u/s.115WE(3) r.w.s. 254 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 09.11.2019.

2. The first issue raised by assessee is violation of principles of natural justice and passing ex-parte order. For this, assessee has raised following three grounds:-

“1. The order of National Faceless Appeal Centre, Delhi dated 10.01.2022 for the above assessment year is contrary to law, facts , and in the circumstances of the case.

2. The NFAC erred in passing the order ex-parte and ought to have appreciated that any order passed in violation of principles of natural justice should be reckoned as nullity in law inasmuch as further ought to have appreciated that the findings of non compliance of the notices issued in the appellate proceedings in Para 4 of the impugned order were completely erroneous and ought to have appreciated that perverse findings of facts would vitiate the ex-parte appellate order.

3. The NFAC erred in confirming the fringe benefit tax assessment u/s 115WE of the Act without assigning proper reasons and justification and ought to have appreciated that the computation of fringe benefits for taxation on various facets was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.”

3. At the outset, the Id.counsel for the assessee took us through the order of CIT(A) and stated that the CIT(A) only dismissed the appeal for non-prosecution simpliciter and there is no discussion on facts how the total value of fringe benefit was adopted by the assessee and made addition of Rs.18,62,133/-. When these facts were confronted to Id. Senior DR, he could not controvert the same.

4. After hearing both the sides and going through the order of CIT(A), we noted that the CIT(A) simpliciter dismissed the appeal

for non-prosecution. We are of the view that unless the statute authorizes a quasi judicial authority to dismiss the appeal for default expressly or by inevitable implication, the appellate authority has to decide the appeal and not to dismiss it for default. Probably, appellate authority has to decide the appeal on merits by a speaking order. Where an appeal has been disposed off ex-parte and without adjudicating the issue, ex-parte order is not maintainable. Hence, the order passed by the CIT(A) is not maintainable and accordingly the same is reversed. Accordingly the order of CIT(A) is set aside and the matter is remanded back to his file for fresh adjudication after allowing reasonable opportunity of being heard to the assessee.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20th May, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 20th May, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |